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10 SERVICE EMPLOYEES INTERNATIONAL UNION,
11 UNITED HEALTHCARE WORKERS – WEST

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 SHAMANEEN Z. KHAN,

15 Plaintiff,

16 v.

17 THE PERMANENTE MEDICAL GROUP,
18 INCORPORATED, A CALIFORNIA
19 CORPORATION; SEIU -- UNITED
20 HEALTHCARE WORKERS – WEST, a
21 California Corporation and DOES 1-50,
22 INCLUSIVE,

23 Defendants.

) No. C-08-01783 WHA

) **DECLARATION OF ERIC SMITH IN**
) **SUPPORT OF SEIU, UNITED**
) **HEALTHCARE WORKERS -- WEST'S**
) **MOTION TO DISMISS FOR FAILURE**
) **TO STATE A CLAIM FOR WHICH**
) **RELIEF CAN BE GRANTED**

) **[FED.R.CIV.PROC. 12(b)(6)]**

) Date: May 29, 2008

) Time: 8:00 a.m.

) Judge: William H. Alsup

) Courtroom: 9, 19th Floor

1 I, Eric Smith, hereby declare as follows:

2 1. I am the a Union Field Representative/Organizer for the Service Employees
3 International Union, United Healthcare Workers – West (“UHW”), serving the Union’s members
4 employed at the Kaiser Medical Center in Hayward, California. As the Field
5 Representative/Organizer at for the Kaiser Medical Center in Hayward, I was involved in the
6 appeal process regarding the grievance filed on behalf of Shamaneen Z. Khan. I make this
7 declaration upon my personal knowledge, and, if called as a witness, I could competently testify to
8 the facts hereinafter stated.

9 2. The usual process for filing grievances in SEIU, United Healthcare Workers – West
10 is as follows. If the grievance is arising out of a work dispute or discipline that does not include
11 termination, a step I grievance is filed by a shop steward at the facility. If the grievance concerns
12 termination, the grievance process is initiated with filing a step II grievance. If the issue is
13 unresolved or unfavorably resolved at the step II level, the grievance is pursued to step III. If a
14 favorable resolution is not met at step III, a council of work site stewards review the grievance to
15 determine if it should be taken to arbitration. That determination is based on the union’s chances
16 of receiving a favorable determination at arbitration. If the council does not decide to take the
17 grievance to arbitration, the grievant is informed of that decision and has an opportunity to appeal
18 the council’s decision.

19 3. Plaintiff Shamaneen Khan was a member of UHW and worked in the Hayward
20 Kaiser facility.

21 4. On January 17, 2007, Ms. Khan was terminated from her employment at Kaiser.

22 5. A grievance was filed on Ms. Khan’s behalf on or about January 23, 2007.

23 6. As the Field Representative/Organizer assigned to the Hayward Facility, I reviewed
24 Ms. Khan’s grievance with her Steward representatives and after careful consideration and
25 consultation with her representative Stewards, the UHW decided not to pursue Ms. Khan’s
26 grievance to arbitration because it lacked merit. On August 2, 2007, I sent Ms. Khan a letter
27 explaining that UHW had decided not to pursue her grievance any further. A true and correct copy

1 of my August 2, 2007 letter to Ms. Khan is attached hereto as Exhibit A.

2 7. In reaching the decision not to pursue Ms. Khan's grievance, UHW considered the
3 following factors: that Ms. Khan's worked in a large department, which included a number of
4 employees who had more seniority than her; that she had little seniority compared to her co-
5 workers; that vacation requests were based on seniority; that she had been warned by others,
6 including her Shop Stewards, that if she did not report to work on her scheduled work days, Kaiser
7 might discipline her; that she had been denied vacation dates and put on a waiting list due to the
8 needs of the department; and that she failed to report to work for several weeks after her vacation.

9 8. In the process of representing Ms. Khan, I received and reviewed the department
10 vacation calendar and seniority list for December 2006 and January 2007. That list shows that in
11 December 2006, Ms. Khan was number 19 on the seniority waiting list for her vacation request. In
12 other words, 18 individuals with greater seniority had requested the same days that she requested.
13 A true and correct copy of the vacation and seniority list is attached hereto as Exhibit B.

14 9. I also received and reviewed several letters from Kaiser manager Deborah
15 Hennings-Cook to Ms. Khan. I received a copy of a letter dated January 4, 2007, regarding
16 unauthorized time off, requesting that Ms. Khan report to work or face disciplinary action up to
17 and including dismissal. A true and correct copy of the January 4, 2007 letter is attached hereto as
18 Exhibit C.


19 10. I received and reviewed a copy of a letter dated January 5, 2007 from Ms.
20 Hennings-Cook to Ms. Khan. That letter was regarding a second notification of unauthorized time
21 off. A true and correct copy of the January 4, 2007 letter is attached hereto as Exhibit D.

22 11. I received and reviewed a copy of a letter dated January 12, 2007 from Ms.
23 Hennings-Cook to Ms. Khan. That letter was regarding a third notification of unauthorized time
24 off. A true and correct copy of the January 12, 2007 letter is attached hereto as Exhibit E.

25 12. I received and reviewed a copy of a letter dated January 18, 2007 from Ms.
26 Hennings-Cook to Ms. Khan. That letter was regarding Ms. Khan's termination for failing to
27 report to work. A true and correct copy of the January 18, 2007 letter is attached hereto as Exhibit

1 F.

2 I declare under penalty of perjury under the laws of the United States of America and the
3 State of California that the foregoing is true and correct. Executed this 8th day of April 2008 in
4 Oakland, California.



ERIC SMITH

8 118636/489420



560 Thomas L. Berkley Way • Oakland, CA 94612 • 510-251-1250 • Fax 510-763-2680
5480 Ferguson Drive • Los Angeles, CA 90022 • 323-734-8399 • Fax 323-721 3538

August 2, 2007

Shamaneen Khan
34225 Aspen Loop
Union City, Ca 94587

RE: Termination Grievance

Dear Shamaneen:

This letter is to advise you that, after careful consideration and in consultation with your representative Steward(s), SEIU United Healthcare Workers – West has decided not to further pursue our unjust discipline grievance against Kaiser on your behalf.

You have the right to appeal this decision to the Northern California Kaiser Division Steward Council. To do so, send a letter briefly stating the reason you believe the employer cannot justify its decision to terminate your employment to:

Ralph Cornejo
Kaiser Division Director
SEIU United Healthcare Workers West
560 Thomas L. Berkley Way
Oakland, CA 94612

In the event that you choose to appeal the decision, please understand that I will take a position in opposition and strongly recommend against any further pursuit of this grievance.

If you do not appeal this decision by September 30, 2007 we will withdraw the grievance.

Sincerely,

Eric Smith
Field Representative / Organizer, SEIU United Healthcare Workers West

cc: Ralph Cornejo
Hayward Steward Council

EXHIBIT A

www.seiu-uhw.org

Sal Rosselli, *President*

Jorge Rodriguez, *Executive Vice President*

Joan Emslie, *Secretary-Treasurer*

DECEMBER 2006

| Pods | | | | | | Friday 1-Dec-06 | Saturday 2-Dec-06 |
|------|---------------------|--|---------------------------|--|-------------------------------------|--|-----------------------|
| 1 | | | | | | Chloe E. V. Cxd 11/16 AR | |
| 2 | | | | | | Chloe E. V. Cxd 12/8 Is | |
| 3 | | | | | | Moya F. V. OR Black sm. V am Is 11/30/06 | |
| 4 | | | | | | Edana V. 6/1/01 | |
| 5 | | | | | | By: C By: 7/9/05 | |
| 6 | | | | | | ACOP-3L @ 3pm | |
| Pods | | | | | | Shane V. 4 | |
| | Sunday 3-Dec-06 | Monday 4-Dec-06 | Tuesday 5-Dec-06 | Wednesday 6-Dec-06 | Thursday 7-Dec-06 | Friday | Saturday 9-Dec-06 |
| 1 | | Diane M. | Diane M. Pal SL 1330-1331 | Diane M. | Gina F. 130-230p V AR | Gina F. While | |
| 2 | | Ym Is 11/30 Nicole F. V. 3p. 20V AR | Micaela B. cx 12/4 Is | Pal J | Pal J | Cherish Pattipati | |
| 3 | | MURB S. | Moya R. V. TOR de | Moya R. V. TOR de cx 11/20/06 Is | Micaela B. CX 4/7/05 06 Is | Micaela B. CX 12/05/06 Is | |
| 4 | | Micaela B. CX 12/4 Is | Robert M. BFL per Deb AR | Irma V pm V AR | Irma V | Rob F. CX 12/8 Is | |
| 5 | | Moya R. V. TOR de cx 11/30/04 Is | Gina F. C. V. 4/13/01 AR | Robert M. (FMLA) per Deb A | Moya R. V. TOR de cx 11/20/06 Is | Gina F. ML (9-5-30) per Deb | |
| 6 | | Robert M. (FMLA) per Deb AR | Munil S. Vlg @ 4 AB109 AR | Nicole F pm V AR | Robert M. (FMLA) per Deb A | Micaela B. CX 12/05/06 Is | |
| | | Cherish V. While 11/27 Cxd Is 11/30 | | Cherish V. While 11/27 Cxd Is 11/30 | | Robert M. (FMLA) per Deb AR | |
| Pods | Sunday 10-Dec-06 | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday 16-Dec-06 |
| 1 | | Diane M. | Diane M. | Diane M. | Karl S | Gina F. V (4hr pm) AR per | |
| 2 | | Id | Id | Id | Id | Id | |
| 3 | | Id | Id | Id | Id | Id | |
| 4 | | Id | Id | Id | Id | Id | |
| 5 | | Id | Id | Id | Id | Id | |
| 6 | | Id | Id | Id | Id | Id | |

| Pods | Sunday 17-Dec-06 | Monday | Tuesday | Wednesday | Thursday | Friday | Saturday 23-Dec-06 |
|------|---------------------|-----------------------------|-----------------------------|-----------------------------|--------------------|-------------------------------|-----------------------|
| 1 | | Diane M. | Diane M. | Diane M. | Diane M. | Diane M. | |
| 2 | | Jean-McK 11/30-Is | Jean-McK 11/30-Is | Jasmine M. | Kim B. | Sue J. - Sonya W V w/Carol-Ls | |
| 3 | | Sonya W | Sonya W - Vcx 12/5-Is | Talba A. S 130-530 SD | Jasmine M. | Diane M. | |
| 4 | | Shamonee K - V | Shamonee K - V | Shamonee K - V | Jean-McK 11/30-Is | Jasmine M. | |
| 5 | | Gladys W - V cx 12/06/06 sd | Gladys W - V cx 12/06/06 sd | Gladys W - V cx 12/06/06 sd | Jackie H - V | Charlene R - V | |
| 6 | | Cherrie B. | Jasmine M. | Cherrie B. | Fall T. | Kristine E. - V | |
| 7 | | Rocio AV w/ approved Is | Elvira M PMA 2-4pm DHC | Rocio AV w/ approved Is | Brenda G/Kruger Is | Jean-McK 11/30-Is | |
| 8 | | Maria Garcia - pm | Rocio AV w/ approved Is | | | Dorlene R - V WLAR | |
| | | | Arlene Garcia (K30) - Is | | | Christina L (V-sbh) | |
| Pods | Sunday 24-Dec-06 | Monday 25-Dec-06 | Tuesday | Wednesday | Thursday | Friday | Saturday 30-Dec-06 |
| 1 | | X-MAS | Debra CS V | Debra CS V | Debra CS V | Debra CS V | |
| 2 | | | Susan L. | Susan L. | Susan L. | Susan L. | |
| 3 | | | Diane M. BH | Diane M. | Diane M. | Diane M. | |
| 4 | | | Kim B. | Sue J. | Sue J. | Sue J. | |
| 5 | | | Jasmine M. | Joan M. | Joan M. | Charline E. V | |
| 6 | | | Sue J. Brenda-pm (Merjls) | Irene AV | Irene AV | Idella E. - V per Deb | |
| | | | Dorlene R DHW meeting | Aileen V w/Carol WL w/pe 12 | Nrv L-W2 PRALB SD | Joan-McK 11/30-Is | |
| | | | AK - Miriam K (Jan) Dec 06 | Aileen V w/Carol WL w/pe 12 | Dorlene R V WL AR | | |
| | | | | Margaret Kasper prd. w/ps | Jackie H. V WLAR | | |
| Pods | | | | | | Fatema ok from w/ (fb) | |

[illegible]

→ #19 on Seniority waitlist

EXHIBIT B

UHHW MED MASTER VACATION CALENDAR

JANUARY 2007

| Pods | Monday 1-Jan-07 | Tuesday | Wednesday 3-Jan-07 | Thursday 4-Jan-07 | Friday 5-Jan-07 | Saturday 6-Jan-07 |
|------|---------------------|------------------------------|--------------------------------|--------------------------------|-----------------------------|---------------------------------|
| 1 | New Years | | | | | |
| 2 | Sherice E. V. AR | Diep M. | Joan M. Cxd 12/01 AR | Joan M. Cxd 12/01 AR | Joan M. Cxd 12/01 AR | |
| 3 | | Jasmine M. | Margallo R. - R-cx 12/05 sd | Margallo R. - V-cx 12/05 sd | Margallo R. - V-cx 12/05 sd | |
| 4 | | Sue J. | Shamaneen K. V | sd | Shamaneen K. V | |
| 5 | | Charina F. | sd | | Gladys W. - V | |
| 6 | | Ima V. V | | | Jennifer S. | |
| | | | | | | |
| | | | | | | |
| Pods | Sunday 7-Jan-07 | Monday 8-Jan-07 | Tuesday 9-Jan-07 | Wednesday 10-Jan-07 | Thursday 11-Jan-07 | Friday 12-Jan-07 |
| 1 | | Sue J. | Sue J. | Shamaneen K. V. TOR dc | Debbie R. V | |
| 2 | | Gagan C. - BH | Shamaneen K. V. TOR dc | | Albert | |
| 3 | | Shamaneen K. V. TOR dc | Maggie | Maggie | Maggie | Anna M. V CXL 1/2 sd |
| 4 | | Chae Cxd 1/8/07 AR | Chae Cxd 1/8/07 AR | Chae Cxd 1/8/07 AR | Kari R. - V | |
| 5 | | | Miriam R. 59-10 and 430-500 AR | | | Chae Cxd 1/9/07 AR |
| 6 | | | Gagan C. CRR pm sd | | | Chelon B. |
| | | | | | | |
| | | | | | | |
| Pods | Sunday 14-Jan-07 | Monday 15-Jan-07 | Tuesday | Wednesday 17-Jan-07 | Thursday 18-Jan-07 | Friday 19-Jan-07 |
| 1 | | MLK | Chae Cxd 1/16/07 AR | Chae Cxd 1/16/07 AR | Chae Cxd 1/16/07 AR | Methema K. V |
| 2 | | | Bolinda K. V | Chae Cxd 1/16/07 AR | Chae Cxd 1/16/07 AR | Rocio M. V AR |
| 3 | | | Margallo R. - V-cx 1/14/07 | | Chae Cxd 1/16/07 AR | Miriam R. 59-10 and 430-500 AR |
| 4 | | | Chae Cxd 1/16/07 AR | | Chae Cxd 1/16/07 AR | Vimil S. |
| 5 | | | Demetrio F. V | | Chae Cxd 1/16/07 AR | Chelon B. |
| 6 | | | Margallo R. V | | | |
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| Pods | Sunday 21-Jan-07 | Monday 22-Jan-07 | Tuesday 23-Jan-07 | Wednesday 24-Jan-07 | Thursday 25-Jan-07 | Friday 26-Jan-07 |
| 1 | | Methema K. | Miriam R. 59-10 and 430-500 AR | Miriam R. 59-10 and 430-500 AR | Chae Cxd 1/23/07 AR | Kari R. - V |
| 2 | | Mimi S. | | | Jackie H. - 2 AR | Diep C. - V AR |
| 3 | | Diep K. - BH | | | Alminda R. - 1/23/07 | Miriam R. 59-10 and 430-500 AR |
| 4 | | Jabedda B. H | Jabedda B. | Jabedda B. | Jabedda B. | Vimil S. |
| 5 | | Kari | | | Jennifer C. - V 1/23 | Sandy V. - V AR |
| 6 | | Chae Cxd 1/23/07 AR | | | | Jackie H. - V AR |
| | | Joan M. - EOL pm AR Per Cadi | | | | Miriam R. 59-10 and 430-500 AR |
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| Pods | Sunday 28-Jan-07 | Monday 29-Jan-07 | Tuesday 30-Jan-07 | Wednesday 31-Jan-07 | Wait List: | |
| 1 | | Diep C. - V AR | Miriam R. 59-10 and 430-500 AR | Miriam R. 59-10 and 430-500 AR | Jean M. (M4) - 2 | 1 Margallo R. M6 - 2 cx 12/5 sd |
| 2 | | Jabedda B. | Jabedda B. | Jabedda B. | Darlene R. (M5) - 2 | 2 TalbaA. (m5) - 2. 12. |
| 3 | | Ima V. - V AR | Ima V. - V AR | Ima V. - V AR | Jackie H. - 2 | 3 Jennifer S. (m1) - 2. 12. 16 |
| 4 | | Gagan C. - V AR | Gagan C. - V AR | Gagan C. - V AR | Methema K. (M3) - 2 | Rocio M. (m1) - 2 |
| 5 | | Sandy V. - V AR | Sandy V. - V AR | Sandy V. - V AR | Tina F. (M6) - 2 | Gladys W. - 2. 16 |
| 6 | | Margallo R. - V AR | Margallo R. - V AR | Margallo R. - V AR | Nicole F. (M6) - 2 | Annabella P. (M1) - 2 |
| | | | | | Maggie C. (M3) - 2 | 4 Shamaneen K. (M5) 12 |
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KAISER PERMANENTE.

Union City Medical Offices

CERTIFIED MAIL #7001 0320 0001 5327 1707
US MAIL

January 4, 2007

Shamaneen Khan
34225 Aspen Loop
Union City CA 94587

Regarding: Unauthorized Time Off

Dear Shamaneen,

Over the past several months you submitted multiple requests for time off for December and January. I reviewed each request with you and each time and you were denied. You were informed that you were placed on the "wait list" for multiple days per contract.

The only vacation time that was actually approved was your original request for December 11 through December 20, 2006. Your regular scheduled day off would have been December 21, 2006 and you were denied vacation for December 22, 26, 27, and 29, 2006 as well as January 2, 2007 and you failed to report to work on all of these specific dates.

I referred you to your UHW Steward for questions or concerns.

You are on unauthorized time off which is Job Abandonment. You must report to work Friday January 5, 2007. Failure to do so will result in disciplinary action up to and including dismissal.

Sincerely,

A handwritten signature in cursive script that reads "Deborah Hennings-Cook" with a small "RN" to the right.

Deborah Hennings-Cook, RN
Manager - Department of Medicine
(510) 675-4688

01-04-2007

DHC/vmd

EXHIBIT C



Union City Medical Offices
3553 Whipple Road
Union City, CA 94587

CERTIFIED MAIL #7001 0320 0001 5327 1691
US EXPRESS MAIL

January 5, 2007

Shamaneen Khan
34225 Aspen Loop
Union City, CA 94587

Regarding: Second Notification
Unauthorized Time Off

Dear Shamaneen,

Over the past several months you submitted multiple requests for time off for December and January. I reviewed each request with you and each time and you were denied. You were informed that you were placed on the "wait list" for multiple days per contract.

The only vacation time that was actually approved was your original request for December 11 through December 20, 2006. Your regular scheduled day off would have been December 21, 2006 and you were denied vacation for December 22, 26, 27, and 29, 2006 as well as January 2, 2007 and you failed to report to work on all of these specific dates.

I referred you to your UHW Steward for questions or concerns.

You are on unauthorized time off which is Job Abandonment. You must report to work Friday January 5, 2007. Failure to do so will result in disciplinary action up to and including dismissal.

Because you did not report to work on January 5, 2007 as requested, you must contact me by phone to set up a meeting with me and your Union Steward.

Sincerely,

A handwritten signature in cursive script that reads "Deborah Hennings-Cook".

Deborah Hennings-Cook RN
Medicine Manager
(510) 675-4688
01-05-07
DHC/vmd

EXHIBIT D



Union City Medical Offices

CERTIFIED MAIL # 7001 0320 0001 5327 1684
US MAIL

January 12, 2007

Shamaneen Khan
34225 Aspen Loop
Union City, CA 94587

Regarding: Third Notification
Unauthorized Time Off

Dear Shamaneen,

You have been notified twice to contact me by telephone. I still have not heard from you.

Please do not report to work. You must call me so that we can set up a meeting.

Sincerely,

A handwritten signature in cursive script that reads "Deborah Hennings-Cook".

Deborah Hennings-Cook RN
Medicine Manager
(510) 675-4688
01-12-07
DHC/vmd

EXHIBIT E

Kaiser Permanente Medical Group, Inc.
3553 Whipple Road
Union City, CA 94587

SKHAN 3rd Request.LTR

The Permanente Medical Group, Inc.

GREATER SOUTHERN ALAMEDA AREA
HAYWARD & FREMONT MEDICAL CENTERS

27400 HESPERIAN BOULEVARD
HAYWARD, CALIFORNIA 94545

39400 PASEO PADRE PARKWAY
FREMONT, CALIFORNIA 94538

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|--------------|-----------------|------------------|
| Alameda | Mountain View | Sacramento |
| Alameda | Mountain View | San Francisco |
| Campbell | Mountain View | San Jose |
| Clayton | Mountain View | San Rafael |
| Contra Costa | Mountain View | San Ramon |
| El Cerrito | Oakland | Selma |
| Emeryville | Park Shorelands | S. Sacramento |
| Folsom | Petaluma | S. San Francisco |
| Fremont | Pleasanton | Stockton |
| Fresno | Rancho Cordova | Tamale |
| Glendale | Redwood City | Vallejo |
| Hawthorne | Robert Park | Winters |
| Hayward | Richmond | |
| Menlo Park | Roseville | |

BARRY SCURRAN, D.P.M.
Physician-in-Chief

CALVIN WHEELER, M.D.
Physician-in-Chief

January 18, 2007

Shamaneen Khan
43225 Aspen Loop
Union City, CA 94587

Regarding: Termination

Dear Shamaneen,

This letter is to inform you that you are being terminated for unauthorized time off/ job abandonment. Beginning on January 20, 2006 you requested time off for which you were denied and placed on the "wait list". We met with you multiple times over the past several months to discuss your requests and you were informed every time of the denial. However, on December 18, 2006 you elected to take the time off without approval for all of the extended time that was denied.

On January 4, 2007 a letter was mailed requesting you to report to work on January 5, 2007(see attached).

On January 5, 2007 another letter was mailed requesting you to report to work. However, you still failed to report to work (see attached).

A third letter was mailed on January 12, 2007 requesting you to not report to work, but to call me to set up a meeting with myself and a UHW Steward (see attached).

The Staffing Department notified me during your absence that you called four times notifying them that your were out of the Country on a religious pilgrimage.

As a result of your actions your employment with Kaiser Permanente has been terminated effective January 17, 2007.

We wish you well with your future endeavors.

Deborah Hennings-Cook, RN
Manager, Department of Medicine



KAISER PERMANENTE

EXHIBIT F